

APPENDIX B

**Unilateral Administrative Order
Docket Number V-W-93-C-184 issued by EPA on March 15, 1993**



143763

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

H-7J

MAR. 16 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lisa Seglin, Esq.
Waste Management of North America, Inc.
3003 Butterfield Road
Oak Brook, Illinois 60521

Re: City Disposal Corporation Landfill Site
Dunn, Wisconsin


Dear Ms. Seglin:

Enclosed please find a unilateral administrative order ("Order") issued by the United States Environmental Protection Agency ("U.S. EPA") under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. § 9606, et seq.

Please note that the Order allows an opportunity for a conference if requested within 10 days following issuance of the Order, or if no conference is requested, an opportunity to submit written comments within 7 days after the effective date of the Order.

If you have any questions regarding this Order, please contact Andrew Warren, Assistant Regional Counsel, at (312) 353-5485, or Russell Hart, Remedial Project Manager, at (312) 886-4844.

Sincerely, 

 William E. Muno, Acting Director
Waste Management Division

Enclosure

cc: Wisconsin Department of Natural Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

City Disposal Corporation Landfill Site
Dunn, Wisconsin

RESPONDENT:

Waste Management of Wisconsin, Inc.

PROCEEDING UNDER SECTION 106(a) OF THE
COMPREHENSIVE ENVIRONMENTAL RESPONSE,
COMPENSATION, AND LIABILITY ACT OF 1980,
AS AMENDED, 42 U.S.C. § 9606(a)

Docket No.

V-W-93-C-184

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UNILATERAL ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

City Disposal Corporation Landfill Site
Dunn, Wisconsin

RESPONDENT:

Waste Management of Wisconsin, Inc.

Docket No.

PROCEEDING UNDER SECTION 106(a) OF THE
COMPREHENSIVE ENVIRONMENTAL RESPONSE,
COMPENSATION, AND LIABILITY ACT OF 1980,
AS AMENDED, 42 U.S.C. § 9606(a)

UNILATERAL ADMINISTRATIVE ORDER FOR REMEDIAL DESIGN AND REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

1. This Unilateral Administrative Order ("Order") directs Waste Management of Wisconsin, Inc. ("Respondent") to perform a remedial design for the remedy described in the Record of Decision, dated September 28, 1992, for the City Disposal Corporation Landfill Site ("the Site") and implement the remedy by performing a remedial action.

2. This Order is issued by the United States Environmental Protection Agency ("EPA") pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Fed. Reg. 2926, and was

further delegated to the Regional Administrators on September 13, 1987, by EPA Delegation Nos. 14-14 and 14-14A, and was further delegated to the Director, Waste Management Division, Region V, by EPA Delegation No. 14-14B.

II. PARTIES BOUND

3. This Order applies to and is binding upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

4. Respondent shall provide a copy of this Order to any prospective owner or successor before a controlling interest in Respondent's assets, property rights, or stock is transferred to the prospective owner or successor.

5. Respondent shall provide a copy of this Order to each contractor hired to perform the Work (as defined below) required by this Order and to each person representing Respondent with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondent or its contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to

be in a contractual relationship with Respondent within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

6. No later than 30 days prior to a transfer of interest in real property included within the Site, Respondent shall submit a true and correct copy of the transfer documents to EPA, pursuant to Section XVII (Notices and Submissions). Respondent also shall identify the name(s) and principal business address(es) of the transferee(s).

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Order and the Statement of Work.

"Order" shall mean this Unilateral Administrative Order and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Order and any appendix, this Order shall control.

"Paragraph" shall mean a portion of this Order identified by an arabic numeral or an upper case letter.

"Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in the ROD or the SOW.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the City Disposal Corporation Landfill Site signed on September 28, 1992, by the Regional Administrator, EPA Region V, and all attachments thereto.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by Respondent to implement the final plans and specifications submitted by Respondent pursuant to the Remedial Design Work Plan and approved by EPA.

"Remedial Action Work Plan" shall mean the document submitted by Respondent pursuant to Paragraph 50.a of this Order and described more fully in Paragraph 50.b.

"Remedial Design" shall mean those activities to be undertaken by Respondent to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document submitted by Respondent pursuant to Paragraph 49.a of this Order and described more fully in Paragraph 49.b.

"Respondent" shall mean Waste Management of Wisconsin, Inc.

"Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections IX (Additional Response Actions), X (EPA Periodic Review), XVIII (Access to Property) (including, but not limited to, attorneys fees and the amount of just compensation), and XI (Emergency Response).

"Section 106 Administrative Record" shall mean the Administrative Record which includes all documents considered or relied upon by EPA in preparation of this Order. The Section 106 Administrative Record Index is a list of all documents included in the Section 106 Administrative Record and is attached hereto as Appendix C.

"Site" shall mean the City Disposal Corporation Landfill Site, encompassing approximately thirty-eight (38) acres, located west of Sand Hill Road in the Town of Dunn, Dane County, Wisconsin, and all areas where hazardous substances disposed at the City Disposal Corporation Landfill Site have come to be located.

"State" shall mean the State of Wisconsin.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Order and any modifications made in accordance with this Order.

"United States" shall mean the United States of America.

"WDNR" shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Respondent is required to perform under this Order, except those required by Section XX (Retention of Records).

IV. DETERMINATIONS

8. The Site is located on approximately 38 acres in the southern half of Section 30, Township 6 North, Range 10 East, Dane County, Wisconsin. The Site is within a rural agricultural area. The nearest residence is approximately 1000 feet to the southwest of the Site. A man-made drainage channel, known as Badfish Creek, is adjacent to the Site. A small lake, Grass Lake, is located approximately 700 feet northeast of the Site.

9. On August 2, 1966, the Town of Dunn issued a permit to the City Disposal Corporation for disposal of waste at the Site. City Disposal Corporation also obtained a solid waste license from WDNR for landfill activities, effective on July 1, 1969.

10. The Site operated as a landfill from approximately 1966 to 1977. During this period of operation, hazardous and non-hazardous waste was disposed at the Site from residential, commercial, and industrial sources. The Town of Dunn ordered the landfill closed in 1977.

11. The Site was divided into twelve disposal cells, five of which were filled or partially filled. One cell, disposal cell number 12, was designated as a disposal area for liquid hazardous waste. The liquid hazardous waste was transported to the Site in drums. The drums were staged near the open disposal cell 12 and drained into the cell. Solid waste was mixed with the liquid

contents of the disposal cell. After draining, the empty drums were placed in disposal cell 6. The landfill lacks a bottom liner to prevent liquid waste and landfill-produced leachate from migrating to the groundwater.

12. During its period of operation, City Disposal Corporation, the Site operator, was ordered to correct certain operating deficiencies by WDNR. Inspections identified the following improper activities: daily compaction and cover requirements were not met; the operator failed to adequately control windblown material; toxic and hazardous waste areas at the landfill received excess amounts of surface water runoff; the landfill slopes were improperly graded and sloped.

13. Respondent was from on or about August of 1966 to December 31, 1976, the operator of the Site. City Disposal Corporation, a corporate predecessor of Respondent, operated the Site under a sanitary landfill lease with the Site property owners beginning on or about July 18, 1966. Respondent operated the Site, in its present corporate form, from approximately 1972 to the end of this operating period. During this time, hazardous substances, including some or all described in this Section, were disposed at the Site.

14. Respondent, in its current corporate form, as well as a corporate successor of City Disposal Corporation, accepted hazardous substances for transport to, and disposal at the Site and selected the Site for disposal.

15. Respondent is now, and has been since May 27, 1981, the owner of the Site.

16. Pursuant to Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), Respondent submitted a Notification of Hazardous Waste Site on June 9, 1981. In the notification, the following types of waste disposed at the Site were identified; solvents, heavy metals, mixed municipal waste, and paint sludge. The following categories of industrial sources of this waste also were identified; construction, paper/printing, leather tanning, iron/steel foundry, general chemical, plating/polishing, sanitary/refuse, photofinish, lab/hospital, and equipment manufacturing. Respondent estimated that approximately 1,000,000 gallons of waste were disposed at the Site.

17. A Potential Hazardous Waste Site Preliminary Assessment, prepared by an EPA contractor and dated May 19, 1983, estimated that approximately 26,000 drums of solvents, including xylol, naphtha, and cyclohexanone, were disposed at the Site. Other identified wastes disposed at the Site include; semi-liquid paint sludge, oils, butyl alcohol, and tetrahydrofuran. The population potentially exposed to contamination from the Site, through drinking water or recreational use, was estimated as 5,425 persons.

18. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, on September 8, 1983, 48 Fed. Reg. 40667.

19. On June 20, 1986, EPA notified four potentially responsible parties ("PRPs") of their potential liability at the Site. On January 12, 1987, seven additional PRPs were notified. In each notification, EPA requested that the PRPs voluntarily finance and perform a remedial investigation and feasibility study at the Site.

20. On August 25, 1987, EPA and WDNR entered into an Administrative Order on Consent, pursuant to Sections 106(a), 122(a), and 122(d)(3) of CERCLA, 42 U.S.C. §§ 9606(a), 9622(a), 9622(d)(3), with Respondent for performance of the remedial investigation and feasibility study. In August, 1988, six additional PRPs joined the agreement. Respondent undertook performance of the remedial investigation and feasibility study under EPA oversight.

21. The remedial investigation ("RI") identified the nature and extent of contamination at the Site. The final RI Report was completed in January of 1992. The RI results indicate the presence of volatile organic compounds ("VOCs"), semi-volatile organic compounds, and metal contaminants in groundwater at the Site above federal and state water quality standards. Of the VOCs detected in groundwater, the following were found at the highest concentrations: methylene chloride, methyl ethyl ketone, tetrahydrofuran, toluene, vinyl chloride, and xylenes.

22. A plume of contaminated groundwater has been delineated at the Site. The highest concentrations of contamination originate from disposal cells 6 and 12, which received hazardous substances

for disposal. The landfill waste material continues to act as a source of groundwater contamination.

23. The RI also determined that surface soils at the Site contain high concentrations of VOCs and semi-volatile organic compounds. Soil samples also indicate the presence of VOCs next to and beneath the landfill.

24. The RI determined that contamination detected in the groundwater and soil at the Site poses a risk to human health and the environment. As part of the RI, a baseline risk assessment was performed based on the present condition of the Site. The following contaminants of concern, each detected at the Site, were selected for risk characterization in groundwater:

acetone; benzene; benzoic acid; 2-butanone (also known as methylethylketone); carbon tetrachloride; chlorobenzene; chloroethane; 1,1-dichloroethane; 1,2-dichloroethane; trans-1,2-dichloroethane; 1,2-dichloropropane; diethylphthalate; ethylbenzene; 2-hexanone; isophorone; 4-methyl-2-pentanone; methylene chloride; 2-methylphenol; 4-methylphenol; naphthalene; phenol; 1,1,2,2-tetrachloroethane; tetrachloroethane; tetrahydrofuran; toluene; 1,1,1-trichloroethane; trichloroethane; vinyl acetate; vinyl chloride; m-xylene; o&p-xylenes; beryllium; cadmium; calcium; chloride; chromium; cobalt; copper; cyanide; fluoride; iron; lead; magnesium; manganese; nickel; nitrate; potassium; selenium; silver; sodium; sulfate; vanadium; and zinc.

In addition, a risk characterization in surface soils was performed, based on the following contaminants of concern detected at the Site:

acetone; benzoic acid; bis(2-ethylhexyl)phthalate; butylbenzylphthalate; di-n-butylphthalate; dibenzofuran; ethylbenzene; fluorene; 2-methylnaphthalene; naphthalene; phenol; tetrahydrofuran; toluene; m-xylene; o&p-xylenes; aluminum; antimony; arsenic; barium; beryllium; boron; cadmium; calcium; chromium; cobalt; copper; cyanide; iron; lead; magnesium; manganese; mercury; nickel; potassium; silver; sodium; vanadium; and zinc.

25. Using these contaminants of concern, the baseline risk assessment calculated both carcinogenic and non-carcinogenic risk to exposed populations through various exposure pathways and land use scenarios. The greatest risk posed by the Site is through use of contaminated groundwater under current and future use scenarios. A carcinogenic risk of 2×10^{-2} was calculated for ingestion of groundwater at the Site. This translates to an additional risk of one in fifty that a person will develop cancer in their lifetime due to Site contaminants.

26. A Hazard Index indicates whether the non-carcinogenic contamination at the Site poses a threat to an exposed population. A Hazard Index greater than one indicates that potential health risks exist. The baseline risk assessment calculated a Hazardous Index of 4000 for the Site.

27. The feasibility study ("FS") considered remedial alternatives to protect human health and the environment from Site contaminants. The FS Report was completed in March of 1992. The specific goals for remedial action at the Site, utilized in the FS, were as follows: protect the public from direct contact with landfill waste and gases; prevent the release of contamination from the landfill waste material into soil and groundwater; and restore the contaminated groundwater to its beneficial use as a drinking water source by achieving groundwater quality standards.

28. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on May 18, 1992, and provided an

opportunity for public comment on the proposed remedial action. Respondent also was given the opportunity to comment, and did, on the proposed plan for remedial action. All public comments, including Respondent's, are included in the Administrative Record regarding EPA's selection of the remedial action for the Site.

29. EPA's decision on the remedial action to be implemented at the Site is embodied in the Record of Decision. The Record of Decision is incorporated in this Order and attached hereto as Appendix A. The Record of Decision is supported by an Administrative Record which contains the documents and information upon which EPA based the selection of the remedy. EPA's selected remedy has been determined to: provide adequate protection of public health, welfare, and the environment; meet all federal and state environmental laws; and be cost-effective.

30. The selected remedy includes two major components. The first component addresses groundwater contamination and includes the following elements: (1) extraction and treatment of contaminated groundwater; (2) groundwater monitoring to ensure the effectiveness of the remedy; and (3) restrictions on the use of groundwater at the Site. The second component of the remedy addresses the source of the groundwater contamination, the landfill waste material, and includes the following elements:

(1) construction of a solid waste landfill cover over the majority of the Site; (2) construction of a hazardous waste landfill cover over former disposal cells 6 and 12; (3) venting and treatment of

landfill gasses; and (3) in-situ vapor extraction and treatment of volatile organic contamination in the landfill waste material.

31. On October 28, 1992, EPA issued Special Notice of Liability letters, pursuant to Section 122(e)(1) of CERCLA, 42 U.S.C. § 9622(e)(1), to sixteen PRPs, including Respondent. Issuance of Special Notice of Liability letters initiated an enforcement moratorium of 60 days, during which time the PRPs had an opportunity to submit a good faith offer to finance and perform the selected remedy for the Site. The PRPs failed to submit such a good faith offer.

32. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

33. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

34. Respondent is the present site owner and is therefore liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

35. Respondent was the site operator at the time of disposal of hazardous substances and is therefore liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

36. Respondent accepted hazardous substances for transport to a disposal facility and is therefore liable under Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

37. The hazardous waste disposed at the Site, described in Paragraphs 10 through 24, are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are present at the Site.

38. These hazardous substances have been and are being released from the Site, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

39. The past disposal and migration, and potential for future migration, of hazardous substances from the Site pose a threat of "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

40. The release and threat of release of one or more hazardous substances from the Site present, or may present, an imminent and substantial endangerment to the public health or welfare or the environment.

41. The actions required by this Order are necessary to protect the public health, welfare, and the environment and are consistent with National Contingency Plan.

V. NOTICE TO STATE

42. Prior to issuance of this Order, EPA notified the State of Wisconsin Department of Natural Resources that EPA intended to issue the Order.

VI. ORDER

43. Based upon the foregoing Determinations and the Section 106 Administrative Record, Respondent is hereby ordered to comply with all provisions of this Order, including, but not limited to, all Appendices to this Order, all documents incorporated by reference into this Order, and all work plans and schedules approved pursuant to this Order.

VII. GENERAL PROVISIONS

44. Commitments by Respondent

Respondent shall finance and perform the Work in accordance with this Order and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Order. Respondent also shall reimburse the United States for Response Costs as provided in this Order.

45. Compliance With Applicable Law

All activities undertaken by Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan.

46. Permits

a. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.5 of the NCP, 40 C.F.R. § 300.5, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit, Respondent shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

47. Notice of Obligations to Successors-in-Title

a. Within 15 days after the effective date of this Order, Respondent shall record a copy of this Order with the

Recorder's Office, Dane County, State of Wisconsin. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Order and shall reference the recorded location of the Order and any restrictions applicable to the property under this Order.

b. The obligations of Respondent with respect to the provision of access under Section XVIII (Access to Property) and the implementation of institutional controls described below shall be binding upon Respondent and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 30 days after the effective date of this Order, Respondent shall notify EPA, pursuant to Section XVII (Notices and Submissions), that a copy of the Order has been properly recorded in the chain of title as required by Paragraph 47. a.

c. EPA has determined that institutional controls are necessary to effectuate and protect the Remedial Action for the Site and to protect the public health or welfare or the environment. Within 30 days of the effective date of this Order, Respondent shall execute and record the "Declaration of Restrictions and Covenants Upon Real Estate," set forth at Appendix D, with the Dane County Office of Register of Deeds, in the chain of title to the Site property. These deed restrictions shall run with the land and be binding upon any person who subsequently

acquires title or legal interest in the Site property or any portion thereof.

48. Community Relations

Respondent shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondent shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

VIII. PERFORMANCE OF THE WORK BY RESPONDENT

49. Remedial Design.

a. Within 60 days after the effective date of this Order, Respondent shall submit to EPA and the State a work plan for the performance of the Remedial Design at the Site ("Remedial Design Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD in accordance with the SOW and, upon its approval by EPA, shall be incorporated into and become enforceable under this Order. The Remedial Design Work Plan shall describe the tasks and deliverables Respondent will complete during Remedial Design and include a schedule for completing the tasks contained in the Remedial Design Work Plan.

b. The Remedial Design Work Plan shall be consistent with applicable EPA guidance, including, but not limited to, "Superfund Remedial Design and Remedial Action Guidance," OSWER Directive No. 9355.0-4A. The Remedial Design Work Plan shall include a Health and Safety Plan for field design activities which

conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. In addition, the Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) a Pre-design Work Plan; (2) a pilot scale test for an In-situ Vapor Extraction System; (3) a pilot scale test for a Groundwater Extraction/Treatment System; (4) a Material Borrow Source Work Plan; (5) a Pre-Design Activity Report; (6) a preliminary (30%) design submittal; (7) an intermediate (60%) design submittal; (8) a pre-final (95%) design submittal; and (9) a final (100%) design submittal. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, and submittal of the Health and Safety Plan for all field activities to EPA, Respondent shall implement the Remedial Design Work Plan. The Respondent shall submit to EPA all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Respondent shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary (30%) design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; (7) preliminary construction schedule; (8) real estate, easement, and permit requirements; (9) proposed cleanup verification methods; (10) expected long-term operation and maintenance requirements; and (11) proposed locations of construction, extraction, monitoring, pipeline conveyance, and treatment operations.

e. The intermediate (60%) design submittal shall be a continuation and expansion of the preliminary design and shall include, at a minimum, the following: (1) draft Construction Quality Assurance Plan; (2) draft Quality Assurance Project Plan; (3) draft Health and Safety Plan; (4) draft Field Sampling Plan; and (5) draft Contingency Plan.

f. The pre-final (95%)/final (100%) design submittal(s) shall include, at a minimum, the following: (1) final Construction Quality Assurance Plan ("CQAPP"); (2) final Quality Assurance Project Plan; (3) final Health and Safety Plan; (4) final Field Sampling Plan; (5) final Contingency Plan; (6) draft Operation and Maintenance Plan; (7) a capital and operation and maintenance present value cost estimate; and (8) a Final Project Schedule for construction and implementation of the Remedial Action. The CQAPP, which shall detail the approach to quality assurance during

construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of Respondent's Project Coordinator, to conduct a quality assurance program during the construction phase of the project.

g. Any noncompliance with the approved Remedial Design Work Plan shall be a violation of this Order. Upon approval of the final remedial design submittal, the remedial design is incorporated into this Order as an enforceable provision.

50. Remedial Action.

a. Within 30 days after EPA's approval of the final design submittal, Respondent shall submit to EPA and the State a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction of the remedy, in accordance with the SOW and the design plans and specifications in the approved final design submittal. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Order. At the same time as Respondent submits the Remedial Action Work Plan, it shall submit to EPA and the State a Health and Safety Plan for field activities, required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the following: (1) schedule for completion of the Remedial Action;

(2) method for selection of the Remedial Action contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Plan; (5) methods for satisfying permitting requirements; (6) methodology for implementation of the Operation and Maintenance Plan; (7) methodology for implementation of the Contingency Plan; (8) tentative formulation of the Remedial Action team; (9) construction quality control plan; and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include a schedule for performance of all Remedial Action tasks identified in the final design submittal and shall identify Respondent's proposed Remedial Action Project Team.

c. Upon approval of the Remedial Action Work Plan by EPA, Respondent shall implement the activities required under the Remedial Action Work Plan. Respondent shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Respondent shall not commence physical on-site activities at the Site prior to approval by EPA of the Remedial Action Work Plan.

51. Any noncompliance with the approved Remedial Action Work Plan shall be a violation of this Order. The Work performed by Respondent pursuant to this Order shall include the obligation to

achieve the Performance Standards. Nothing in this Order, or in EPA's approval of any work plan or other deliverable, shall be deemed to constitute a warranty or representation that Respondent's full performance of the Remedial Design or Remedial Action will achieve the Performance Standards. Respondent's compliance with EPA-approved deliverables shall not foreclose EPA's right to require additional work necessary to achieve the Performance Standards.

52. Off-Site Shipment of Waste Material

a. All Waste Material removed from the Site shall be disposed or treated at a facility approved by EPA and in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), EPA's "Revised Off-Site Policy," OSWER Directive No. 9834.11, and applicable federal, state, and local requirements. Respondent shall, prior to any shipment of Waste Material away from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material.

b. Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the

shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

c. The identity of the receiving facility and state will be determined by the Respondent following the award of the contract for Remedial Action construction. The Respondent shall provide the information required by Paragraph 50.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

IX. ADDITIONAL RESPONSE ACTIONS

53. In the event that EPA, in its sole discretion, determines that additional response actions are necessary to meet the Performance Standards or to maintain consistency with the selected remedy, EPA will notify Respondent's Project Coordinator of such additional response actions. EPA also may require that Respondent modify any submittal required by this Order.

54. Within 30 days of receipt of notice from EPA that additional response actions are necessary, Respondent shall submit to EPA for approval a work plan for the additional response actions ("Additional RD/RA Work Plan"). The Additional RD/RA Work Plan shall conform to applicable requirements of Section VIII (Performance of Work by Respondent). Upon approval of the Additional RD/RA Work Plan, pursuant to Section XIII (Submissions Requiring Agency Approval), Respondent shall implement the additional response actions in accordance with the schedule contained therein. The approved Additional RD/RA Work Plan shall

become an enforceable provision of this Order. Failure to submit an Additional RD/RA Work Plan as required by this Section shall constitute noncompliance with this Order.

X. EPA PERIODIC REVIEW

55. Respondent shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c). Copies of the studies, reports, proposals, documents or items required by EPA shall be submitted by Respondent to EPA for approval, pursuant to Section XIII (Submissions Requiring Agency Approval).

56. If the Regional Administrator, EPA Region V, or his or her designate, determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), indicates that the Remedial Action is not protective of human health and the environment, Respondent shall undertake further response actions that EPA determines are appropriate. Respondent shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VIII (Performance of the Work by Respondent) and shall implement the plan approved by EPA.

XI. EMERGENCY RESPONSE

57. Upon the occurrence of any event during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health, welfare, or the

environment, Respondent shall immediately take appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Respondent shall notify the Emergency Response Section, EPA Region V. Respondent shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer. Any action taken by Respondent pursuant to this Section shall comply with applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other plans or documents developed pursuant to this Order. In the event that EPA performs a response action due to Respondent's failure to take appropriate response actions as required by this Section, Respondent shall reimburse all of EPA's response action costs not inconsistent with the NCP, pursuant to Section XXIII (Reimbursement of Response Costs).

58. Nothing in the preceding Paragraph or in this Order shall limit the authority of the United States to take, direct, or order all appropriate action to protect human health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of Waste Material at the Site.

XII. REPORTING REQUIREMENTS

59. In addition to any other requirement of this Order, Respondent shall submit to EPA and the State three (3) copies, or an additional number of copies if requested, of written monthly progress reports that: (a) describe the actions which were taken

toward achieving compliance with this Order during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Respondent or its contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Order which were completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gant charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; and (f) include any modifications to work plans or schedules that were approved by EPA. Respondent shall submit these progress reports to EPA and the State by the tenth day of every month following the effective date of this Order until EPA notifies the Respondent pursuant to Paragraph 71.b of Section XIV (Certification of Completion). If requested by EPA, Respondent shall also provide briefings for EPA to discuss the progress of the Work.

60. Respondent shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and

implementation of work plans, no later than 7 days prior to the performance of the activity.

61. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. § 11001 et seq., Respondent shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, EPA Region V. These reporting requirements are in addition to the reporting required by Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of EPCRA, 42 U.S.C. § 11004.

62. Within 20 days of the onset of such an event, Respondent shall furnish to EPA a written report, signed by Respondent's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Respondent shall submit a report setting forth all actions taken in response thereto.

63. Respondent shall submit three (3) copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, and any other approved plans to EPA in accordance with the schedules set forth in such plans.

Respondent shall simultaneously submit three (3) copies of all such plans, reports and data to the State.

64. All reports and other documents submitted by Respondent to EPA (other than the monthly progress reports referred to above) which purport to document Respondent's compliance with the terms of this Order shall be signed by an authorized representative of the Respondent.

XIII. SUBMISSIONS REQUIRING AGENCY APPROVAL

65. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Order, EPA shall: (a) approve the submission, in whole or in part; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove the submission, in whole or in part, and direct that Respondent modify the submission; or (e) any combination of the above.

66. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 65(a), (b), or (c), Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

67. Upon receipt of a notice of disapproval pursuant to Paragraph 65(d), Respondent shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 65(d), Respondent shall proceed, at the direction of EPA,

to take any action required by any non-deficient portion of the submission.

68. In the event that a plan, report or other item, resubmitted pursuant to Paragraph 67 is again disapproved by EPA, EPA may require that Respondent correct the deficiencies, in accordance with the preceding Paragraphs. EPA also, in its sole discretion, may determine that the resubmitted plan, report or other item constitutes a failed submission. If EPA makes such a determination, Respondent shall be in violation of this Order and subject to the provisions of Section XXV (Penalties for Noncompliance).

69. All plans, reports, and other items Respondent is required to submit to EPA under this Order, upon approval or modification by EPA, shall be enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other item Respondent is required to submit to EPA under this Order, the approved or modified portion shall be enforceable under this Order.

XIV. CERTIFICATION OF COMPLETION

70. Completion of the Remedial Action

a. Within 30 days after Respondent concludes that the Remedial Action has been fully performed and the Performance Standards have been attained, Respondent shall schedule and conduct a pre-certification inspection to be attended by Respondent, EPA, and the State. If, after the pre-certification inspection, Respondent still believes that the Remedial Action has been fully

performed and the Performance Standards have been attained, Respondent shall submit to EPA and the State, pursuant to Section XIII (Submissions Requiring Agency Approval), within 30 days of the inspection a written report requesting certification. In the report, a registered professional engineer and Respondent's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Order. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of Respondent or Respondent's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Order or that the Performance Standards have not been achieved, EPA will notify Respondent in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with this Order and the SOW or require the Respondent to submit a schedule to EPA for approval pursuant to Section XIII (Submissions Requiring Agency Approval). Respondent shall perform all

activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph.

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion, that the Remedial Action has been fully performed in accordance with this Order and that the Performance Standards have been achieved, EPA will so certify in writing to Respondent. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Order. Certification of Completion of the Remedial Action shall not affect Respondent's obligations under this Order.

71. Completion of the Work

a. Within 30 days after Respondents conclude that all phases of the Work (including Operation and Maintenance), have been fully performed, Respondent shall schedule and conduct a pre-certification inspection to be attended by Respondent, EPA, and the State. If, after the pre-certification inspection, Respondent still believes that the Work has been fully performed, Respondent shall submit to EPA and the State, pursuant to Section XIII (Submissions Requiring Agency Approval), within 30 days of the inspection a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Order. The report shall contain the following statement, signed by a responsible corporate official of Respondent or Respondent's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA determines that any portion of the Work has not been completed in accordance with this Order, EPA will notify Respondent in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Order and the SOW or require the Respondent to submit a schedule to EPA for approval pursuant to Section XIII (Submissions Requiring Agency Approval). Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established therein.

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Respondent, that the Work has been fully performed in accordance with this Order, EPA will so notify Respondent in writing.

XV. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

72. Respondent shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA

330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Order, Respondent shall submit to EPA and the State a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, and applicable guidance documents. Respondent shall ensure that EPA and State personnel and their authorized representatives are allowed access to all laboratories utilized by Respondent in implementing this Order. In addition, Respondent shall ensure that such laboratories analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Respondent shall ensure that the laboratories utilized for the analysis of samples taken pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the performance of this Order. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Order participate in an EPA or EPA-equivalent Quality Assurance/Quality Control program.

73. Respondent shall notify EPA no less than 14 days in advance of any sample collection activity. Upon request, Respondent shall allow split or duplicate samples to be taken by

EPA and the State or their authorized representatives. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

74. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and other applicable statutes or regulations.

XVI. PROJECT COORDINATORS AND CONTRACTORS

75. All aspects of the Work performed by Respondent pursuant to this Order shall be under the direction and supervision of a Project Coordinator qualified to undertake and complete the requirements of this Order. Respondent's Project Coordinator shall be EPA's primary point of contact with Respondent and shall possess sufficient technical expertise regarding all aspects of the Work. Within 15 days of the effective date of this Order, Respondent shall submit to EPA, pursuant to Section XVII (Notices and Submissions), the name and qualifications of the proposed Project Coordinator, primary support entities, and staff.

76. Within 30 days after EPA approval of the Remedial Action Work Plan, Respondent shall submit to EPA, pursuant to Section XVII (Notices and Submissions), the name, background, and qualifications of the construction contractor Respondent proposes to use for Work required by this Order. In the event EPA disapproves the proposed construction contractor, Respondent shall submit the name,

background, and qualifications of a new proposed construction contractor within 15 days of EPA's disapproval.

77. Respondent shall submit a copy of the construction contractor solicitation document to EPA no later than 5 days after publishing the solicitation documents. Upon EPA's written request, Respondent shall submit complete copies of all bid packages received from all contract bidders when Respondent notifies EPA of the identity of the proposed construction contractor.

78. No later than 15 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 71 of Section XIV (Certification of Completion) comprehensive general liability insurance and automobile insurance with limits of two million dollars (\$2,000,000.00), combined single limit naming as additional insured the United States. In addition, for the duration of this Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. Prior to commencement of the Work under this Order, Respondent shall provide to EPA certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor

maintains insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

79. EPA retains the right to disapprove of Respondent's Project Coordinator and any contractor retained by Respondent. In the event EPA disapproves a Project Coordinator or contractor, Respondent shall retain a new Project Coordinator or contractor to perform the Work. Respondent's selection of a new Project Coordinator or contractor shall be made within 15 days of EPA's disapproval. If during performance of the Work, Respondent proposes a new Project Coordinator or contractor, Respondent shall notify EPA no less than 15 days prior to the new Project Coordinator or contractor performing Work pursuant to this Order.

80. EPA's Project Coordinator

EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt Work required by this Order and to take any necessary response action when he or she determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to the release or threatened release of Waste Material.

XVII. NOTICES AND SUBMISSIONS

81. Whenever, under the terms of this Order, written notice is required to be given or a report or other document is required to be sent by Respondent, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to Respondent in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

As to the EPA

Russell Hart (or his successor)
EPA Project Coordinator
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
telephone (312) 886-4844

Alternate Project Coordinator:

Douglas Ballotti
Chief, MI/WI Section
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
telephone (312) 886-4752

As to the State

Michael Schmoller (or his successor)
State Project Coordinator
Wisconsin Department of Natural Resources
Bureau of Solid and Hazardous Waste
Southern District Office
3911 Fish Hatchery Road
Fitchburg, Wisconsin 53711
telephone (608) 275-3303

XVIII. ACCESS TO PROPERTY

82. Commencing upon the effective date of this Order, Respondent agrees to provide the United States, the State, and

their representatives, including EPA and its contractors, access at all times to the Site and other property to which access is required for the implementation of this Order, to the extent access to the property is controlled by Respondent, for the purposes of conducting any activity related to this Order including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to EPA;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents; and
- g. Assessing Respondent's compliance with this Order.

83. To the extent that the Site or any other property to which access is required for the implementation of this Order is owned or controlled by persons other than Respondent, Respondent shall use best efforts to secure access agreements from such persons within 60 days of the effective date of this Order. Such access agreements shall provide access for Respondent, as well as for the United States and the State and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Order. Any access agreement obtained pursuant to

this Paragraph shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. Respondent shall submit copies of access agreements to EPA, pursuant to Section XVII (Notices and Submissions), prior to initiation of field activities on the affected property. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 60 days of the effective date of this Order, or within 45 days of the date EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify EPA of its failure to obtain access.

84. If Respondent cannot obtain the necessary access agreements, EPA, in the exercise of its non-reviewable discretion, may: (1) use its legal authorities to obtain access for Respondent; (2) conduct response actions at the property in question; or (3) terminate this Order. If EPA conducts a response action and does not terminate this Order, Respondent shall perform all of the activities not requiring access to that property. Respondent shall integrate the results of any response action taken by EPA into its reports and deliverables. Respondent shall reimburse EPA, pursuant to Section XXIII (Reimbursement of Response Costs), for costs incurred by the United States to obtain access for Respondent.

XIX. ACCESS TO INFORMATION

85. Respondent shall provide to EPA or the State, upon request, copies of all documents and information within its

possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA or the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

86. Confidential Business Information

a. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA or the State, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Respondent.

b. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law.

If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient of the document; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondent. However, no sampling and analytical data concerning the Site and no documents, reports or other information created or generated pursuant to the requirements of the Order shall be withheld on the grounds that they are privileged.

c. Respondent shall maintain, for the duration of this Order, an index of documents that Respondent claims contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Respondent shall submit an updated copy of the index to EPA with each new document claimed to be confidential business information. The updated index shall also indicate any documents for which a confidential business information claim is withdrawn.

d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XX. RETENTION OF RECORDS

87. On or before the effective date of this Order, Respondent shall submit a written certification to EPA, pursuant to Section XVII (Notices and Submissions), that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since the time of its notification of potential liability by EPA or the State. Respondent shall not dispose of any such documents without prior approval by EPA. Upon EPA's request, Respondent shall make all such documents available to EPA and shall submit a log of documents claimed as privileged. This privilege log shall contain the information required by Paragraph 86.b of Section XIX (Access to Information).

88. Until 10 years after the Respondent's receipt of EPA's notification pursuant to Paragraph 71.b of Section XIV (Certification of Completion of the Work), Respondent shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Respondent's receipt of EPA's notification pursuant to Paragraph 71.b of Section XIV (Certification of Completion), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of

whatever kind, nature or description relating to the performance of the Work.

89. At the conclusion of this document retention period, Respondent shall notify EPA and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or the State, Respondent shall deliver any such records or documents to EPA or the State. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with a privilege log containing the information required by Paragraph 86.b of Section XIX (Access to Information). However, no sampling and analytical data concerning the Site and no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

XXI. DELAY IN PERFORMANCE

90. Any delay in performance of this Order according to its terms and schedules that is not properly justified by Respondent under the terms of this Section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligation to fully perform all requirements of this Order.

91. Respondent shall notify EPA of any delay or anticipated delay in performing the requirements of this Order. Such notification shall be made by telephone to EPA's Project

Coordinator or Alternate Project Coordinator within forty-eight (48) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize the delay. Within seven (7) days after notifying EPA by telephone, Respondent shall provide a written justification fully describing the nature of the delay, including, but not limited to, the following elements: the justification for delay; any reason why Respondent should not be held strictly accountable for failing to comply with the relevant requirements of this Order; the measures planned and taken by Respondent to minimize the delay; and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with performance of the activities required by this Order is not a justification for delay in Respondent's performance.

XXII. ASSURANCE OF ABILITY TO COMPLETE WORK

92. Within 30 days following EPA's approval of the Remedial Design Work Plan, Respondent shall establish and maintain financial security in the amount of fourteen million, eight hundred and fifty-one thousand, three hundred and eighty-seven dollars (\$14,851,387.00), the estimated cost of the Remedial Design and Remedial Action, in one of the following forms:

- (a) A surety bond guaranteeing performance of the Work;
- (b) One or more irrevocable letters of credit equalling the total estimated cost of the Work;
- (c) A trust fund;

(d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Respondent; or

(e) A demonstration that Respondent satisfies the requirements of 40 C.F.R. § 264.143(f).

93. If the Respondent seeks to demonstrate its ability to complete the Work through a guarantee by a third party pursuant to Paragraph 92(d) of this Order, Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Respondent seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 92(d) or (e), it shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the effective date of this Order. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 92 of this Order. Respondent's failure to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

XXIII. REIMBURSEMENT OF RESPONSE COSTS

94. Respondent shall reimburse the United States for all Response Costs not inconsistent with the National Contingency Plan

incurred by the United States. The United States will send Respondent a bill for such costs in the form of an Itemized Cost Summary, or its future equivalent, on at least an annual basis. Respondent shall make all payments within 30 days of Respondent's receipt of each bill requiring payment. Respondent shall make all payments required by this Paragraph in the form of a certified check made payable to "EPA Hazardous Substance Superfund" and referencing CERCLA Number TJB05B4L8. Respondent shall forward the certified check to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673.

95. In the event that the payments required by Paragraph 94 are not made within 30 days of Respondent's receipt of the bill, Respondent shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest to be paid on Response Costs shall begin to accrue on the date of the Respondent's receipt of the bill. Interest shall accrue at the rate specified through the date of Respondent's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

XXIV. OTHER CLAIMS

96. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from acts or omissions of Respondent. The United States or EPA shall not be a party to any contract entered into by

Respondent or its officers, directors, employees, agents, contractors, subcontractors, and persons acting on Respondent's behalf or under its control, in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

97. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

98. Nothing in this Order constitutes a satisfaction of, or release from, any claim or cause of action against Respondent or any person not a party to this Order for liability Respondent or any such person may have under CERCLA, other statutes, or the common law, including but not limited to, claims of the United States for costs, damages, and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

XXV. PENALTIES FOR NONCOMPLIANCE

99. Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000.00) per violation per day, as provided in Section 106(b) of CERCLA, 42 U.S.C. § 9606(b). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may perform the Work unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XXVI. RESERVATION OF RIGHTS

100. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of response costs incurred by the United States related to this Order and not reimbursed by Respondent. This reservation shall include, but not be limited to, past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demands, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

101. Notwithstanding other provisions of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the National Contingency Plan, and seek reimbursement from Respondent for EPA's costs, or seek other appropriate relief.

102. Nothing in this Order shall preclude EPA from taking additional enforcement action, including modification of this Order or issuance of additional Orders, or additional response action as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or other applicable law. This Order shall not affect Respondent's liability under Section 107 of CERCLA, 42 U.S.C. § 9607, for the costs of any additional response actions.

103. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection

and enforcement authorities and rights under CERCLA, RCRA, and other applicable statutes and regulations.

104. Nothing in this Order shall constitute a release from any claim, cause of action, or demand in law or equity against any person for liability related to the Site.

XXVII. SEVERABILITY

105. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXVIII. ACCESS TO SECTION 106 ADMINISTRATIVE RECORD

106. The Section 106 Administrative Record supporting issuance of this Order is available for review during normal business hours in the EPA Record Center, Region V, 77 West Jackson Boulevard, Chicago, Illinois. Respondent may contact Andrew Warren, Assistant Regional Counsel, at (312) 353-5485, to review the Section 106 Administrative Record. An index of the Section 106 Administrative Record is attached to this Order as Appendix C.

XXIX. APPENDICES

107. The following appendices are attached to and incorporated into this Order:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the Section 106 Administrative Record Index.

"Appendix D" is a Declaration of Restrictions and Covenants upon Real Estate.

XXX. NOTICE OF INTENT TO COMPLY

On or before the effective date of this Order, Respondent shall notify EPA in writing, pursuant to Section XVII (Notices and Submissions), stating its irrevocable intent to comply with all terms of this Order. Respondent's written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b), 9607(c)(3). The absence of a response from EPA to the notice required by this Paragraph shall not be deemed acceptance of Respondent's assertions. Failure of Respondent to provide such notification shall constitute a violation of this Order.

XXXI. EFFECTIVE DATE

108. The effective date of this Order shall be 30 days after the date of signature by the Director, Waste Management Division, EPA Region V.

XXXII. OPPORTUNITY TO CONFER

109. Within 10 days after the date of signature, Respondent may request a conference with EPA. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

110. If a conference is held, Respondent may present any information, arguments or comments, regarding this Order. Respondent may submit any information, arguments or comments in

writing to EPA within 3 days following the conference or within 7 days after the effective date of this Order, if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek judicial review of this Order. Requests for a conference shall be directed to Andrew Warren, Assistant Regional Counsel, at (312) 353-5485. Respondent's written submittal shall be directed to EPA as specified by Section XVII (Notices and Submissions).

IT IS SO ORDERED

BY:

fa William E. Munó, Acting Director
Waste Management Division
EPA Region V

DATE:

March 15, 1993

